Supreme Court, U.S.
FILED

96 378 SEP 9 1996

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NO. ____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

JAMES KUPCHO,

Petitioner,

vs.

UNITED STATES OF AMERICA; M.R. BRESSANT,
Revenue Officer of the Internal Revenue Service,

Respondents.

On Petition For Writ Of Certiorari
To the United States Court Of Appeals
For the Third Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES KUPCHO
682 RIDGEDALE AVE.
WOODBRIDGE, NJ 07095

QUESTIONS PRESENTED

1. Whether the summons was properly executed.;
2. Whether there was proper authority for the summons; and,
3. Whether there was jurisdiction for the lower courts.

LIST OF PARTIES

All parties are listed on the cover page.

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United States of America; M.R. Bressant, Revenue Officer of the Internal Revenue Service, v. James Kupcho. (U.S. District Court for the District of New Jersey), D.C. Civ. No. 95-03199, and United States of America; M.R. Bressant, Revenue Officer of the Internal Revenue Service, v. James Kupcho, Court of Appeals for the Third Circuit, Case No. 95-5839.

JURISDICTIONAL STATEMENT

This petition for certiorari, filed pursuant to 28 U.S.C. § 1254 (1), seeks review of the Third Circuit Court of Appeal's Opinion in this case reported as Case No. 95-5839. (See Appendix A) The petition for a Rehearing and Suggestion for Rehearing In Banc, was denied on July 30, 1996.(See Appendix B).

STATUTORY PROVISIONS

This case simply involves the clear reading of statutes relied on by the Petitioner, as held by this Court. The lower court's rulings are in complete contradiction to this Court's decisions. For instance, Title 26 U.S.C. § 6065 was enacted by Congress with the following words:

> **Sec. 6065. Verification of returns.**
>
> Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the

> internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Obviously the words chosen by Congress to place in that statute were intended to reflect their intent and purpose. Through the years, the Secretary has not otherwise provided an exception to the requirement of § 6065. Clearly the intent was to recognize the complexity of the internal revenue laws and charge any person or entity with the responsibility to insure that the documents they executed were true and correct as to every material matter, whether government or citizen.

The deliberate refusal of the lower courts to uphold the clear meaning of a statute, contrary to the consistent decisions of this Court, constitutes a fraud on the court. This Court has clearly ruled on such travesties and provided a remedy as stated below:

> "A federal court has the inherent power to vacate its own judgment upon proof that a fraud has been perpetrated upon the court; this historic power of equity to set aside **fraudulently begotten judgments** is necessary to the integrity of the courts; moreover, a federal court has the power to conduct an independent investigation in order to determine whether the court has been the victim of fraud". Chambers v Nasco, Inc., 501 US ____, p. ____, 115 L Ed 2d 27, Head notes (1991) (emphasis added)

A review of this case certainly demonstrates that the judgments of the lower courts were based on fraud. The

government has absolutely refused to accept the statutes as they were enacted by Congress, relying on lower court decisions that seem to allow the government to insert and/or omit certain words from certain statutes.

STATEMENT OF THE CASE

This is a case which concerns the improper execution of summons documents, the authority for the summons, the question of identifying a claimed code provision for enforcement of a summons, and the jurisdiction of the District Court, and the Court of Appeals.

A. Statement of Facts.

This case arises from an Order to Show Cause for failure of the Petitioner to respond to an obviously flawed administrative summons issued by an agent of the Internal Revenue Service.

B. Procedural Background.

On July 7, 1995, the government filed a petition and request for an order to show cause in the United States District Court for the District of New Jersey to enforce an administrative summons issued by Revenue Officer Bressant for the production of books, records and other data. On August 18, 1995, Petitioner filed a Response to the Order to show Cause. On September 21, 1995, the District Court entered an order that the Petitioner must comply with the administrative summons. On October 26, 1995, the District Court denied the Petitioner's Motion for Findings of Fact and Conclusions of law. On December 15,

1995, an appeal was taken to the Third Circuit Court of Appeals. On June 11, 1996, the Third Circuit affirmed the finding of the District Court. On July 30, 1996, the Third Circuit denied the Petitioner's Petition for Rehearing.

C. Argument. Statutory Construction.

The facts of this case raise the following questions:

(a) proper execution of the summons;
(b) the authority for the summons;
(c) jurisdiction of the lower courts.

Since 1897, this Court has continually ruled that where the words of a statute are unambiguous, statutory construction is at an end:

> The primary and general **rule of statutory construction** is that the intent of the lawmaker is to be found **in the language that he has used**. He is presumed to know the **meaning of the words** and the rules of grammar. U.S. v. Goldenberg, et al., 168 U.S. 95, 102 (1897). (emphasis added)

Throughout the years, this Court has consistently ruled that Congress is well aware of their duty as lawmakers. In 1991, this Court stated:

> In construing a federal statute, it is presumable that Congress legislates with knowledge of the United States Supreme Court's basic rules of statutory construction. Mcnary v. Haitian Refugee Center, 498 US 479, 112 L Ed 2d 1005, 111 S Ct 888, (1991)

Those basic rules of statutory construction were made known to Congress in Goldenberg, *supra,* in 1897. In 1994, this Court again made the ruling that the Court's task is only to determine whether the language the legislators actually enacted has a plain, unambiguous meaning:

> The United States Supreme Court, by denying the existence of an ambiguity in some federal statutory language, does not claim to be perfectly certain that the court has defined Congress' intentions as to a particular situation, but the court's task is not the hopeless one of ascertaining what the legislators who passed the law would have decided **had they reconvened** to consider the parties' particular case; rather, the court's task is **to determine whether the language the legislators actually enacted has a plain, unambiguous meaning.** Beecham v. United States, 511 US ____, p. ____, 128 L Ed 2d 383 (1994). (emphasis added)

This Court has certainly made a statement concerning statutory construction that has endured for almost 100 years. Because of that truth, it is inconceivable that this Court would rule contrary to the clear meaning of the 46 words in 26 U.S.C. § 6065. The words of the body of the statute must endure in spite of various attempts to change its meaning by claiming the title supersedes the body of the statute. Such a claim is defeated by 26 U.S.C. § 7806 which precludes descriptive matter in a statute from giving any legal effect. The summons in this case was not executed as required by § 6065. Although, there was no summons issued under § 7602, the law requires that in the event one was issued under that statute, it would be verified under penalties of perjury in accordance with § 6065. Since

the summons was not executed as mandated by § 6065, it would appear that it was not "required to be made under any provision of the internal revenue laws or regulations" as stated in § 6065.

D. Argument. Authority to Issue Summons.

The government has relied on the authority to issue a summons as Commissioner's Delegation Order No. 4 (government's brief to Third Circuit, p. 15). Commissioner's Delegation Order No. 4 reads in pertinent part:

> Order No. 4 (Rev. 21)
> Authority to Issue Summonses, to Administer Oaths and Certify, and to Perform Other Functions
>
> 1(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1(b), 301.7603-1, 301.7604-1 and 301.7605-1(a) and the authorities contained in Section 7609 of the Internal Revenue Code of 1954...

The respondent's have further claimed that the summons was issued under the authority of Internal Revenue Code § 7602. As noted in Delegation Order No. 4, there is no authority to issue a summons under that code section. Delegation Order No. 4 continues by saying, "... and vested in the Commissioner of Internal Revenue Service by Treasury Order No. 150-10 to issue summons;"... The Petitioner has previously submitted a copy of a document CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL DOCUMENT of what is purported to be Treasury Order 150-10, dated April 22, 1982, which supersedes Treasury

Department Order No. 150-37 dated March 17, 1955. Although the government received a copy of that Treasury Order, (Exhibit A), they saw fit to deny its existence. It is strange that the government could not admit to the authenticity of Exhibit A, even though it was "CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL DOCUMENT, and was signed by the Authorized Certifying Official of the Department of the Treasury. Perhaps the reason the government refuses to recognize Treasury Delegation Order 150-10 is due to the obvious errors in that document. Although it is Certified to be a true copy of the original, it is unsigned, and the left bottom shows a date of (11-85) which contrasts with the date of April 22, 1982. Until such time that there is a reasonable explanation of those errors, it must be presumed that Treasury Order 150-10 is invalid, therefore, it could not serve as the underlying authority for Delegation Order No. 4.

E. Argument. The statute for summons not revealed.

The authority for the summons in this case contained the following words "... issued under the authority of the Internal Revenue Code this ...". The Internal Revenue Code contains over 9,000 pages of statutes. It is not reasonable to state the authority for an action as found somewhere in those 9,000 + pages. In other documents associated with the summons, we find the statement that the agent had the authority to issue a summons under 26 U.S.C. § 7602. If he/she does indeed possess such authority, the logical question is why was not that authority stated on the face of the summons? Can this Court or any other Court claim jurisdiction without identifying the jurisdictional

statute? If the answer is in the affirmative, then by like manner, the Petitioner could respond to a summons under authority of the Internal Revenue Code by merely stating that he is responding under authority of title 26 of the United States Code. To take it a step further, the laws of this country are made in pursuance of the United States Constitution. Sec. 8, CL 18 of the Constitution states:

> **All necessary and proper laws.**
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

If the authority for a particular violation can be stated as found within 9,000 + pages, by extending that logic, one could merely write, "this summons is issued under the authority of the United States Constitution". Such a statement is not reasonable, but that form of logic was postulated by the lower courts in this case. Once again, if the agent has the authority to issue a summons under a particular statute, why was not that authority exercised and identified? This Court has never decided a case that was brought under the authority of "Title 26 United States Code", or any other case, whereas, only the title of the Federal laws was given as the authority.

F. Argument. Jurisdiction of the lower courts.

The Petitioner's pleadings throughout these proceedings, clearly shows that there was no summons issued under the

authority of § 7602. It was pointed out that the authority for serving the summons was stated and certified, yet the authority for issuing the summons was given as title 26 U.S.C.

Since there was no valid summons issued under the authority of § 7602 of Title 26 U.S.C., jurisdiction was lacking in the District Court, as well as the Court of Appeals. In addition, the Petitioner **was not** summoned to the District Court with a Court issued summons to respond to the Order to Show Cause. The matter of jurisdiction can be raised at any time and cannot be waived as held by this Court in the following cases:

> As held by the Supreme Court, on every writ of error or appeal, the first and **fundamental question is that of jurisdiction**, first, of the United States Supreme Court, and **then of the court from which the record comes,** and this question **the Supreme Court is bound to ask and answer for itself,** even when not otherwise suggested, and without respect to the relation of the parties to it. Mansfield, C. & L. M. R. Co. v Swan (1884)111 US 379, 28 L Ed 462, 4 S Ct 510; Connell v Smiley (1895) 156 US 335, 39 L Ed 443, 15 S Ct 353. (emphasis added)

> It is fundamental that a determination which is made by a tribunal that is **without jurisdiction of the subject matter** is a nullity and that the **lack of jurisdiction may not be waived** or overcome by the consent or agreement of the parties. Mitchell v. Maurer, 293 US 237, 79 L Ed 338, 55 S Ct 162 (1934); United States v. Corrick, 298 US 435, 80 L. Ed 1263, 56 S Ct 829. (1936) (emphasis added)

G. Argument. Vague statutes.

As this Court has held, the laws are made for the understanding of people of normal intelligence. In spite of that truth, the government and the District Court agreed that the Petitioner's reference to the statutes drafted by Congress was "unintelligible":

THE COURT: I think it is, too. I don't understand what you're saying. (Trans. P 6 L 6, 7)

If the government and the lower courts are unable to understand Congressional enactments, and Supreme Court decisions, it is certainly a cause for alarm. Either there is a pretense of misunderstanding, or such laws would qualify as "void for vagueness" as held in the following case:

> As we said in Grayned v. City of Rockford, 408 US 104, 108, 33 L Ed 2d 222, 92 S Ct 2294 (1972):
>
> "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity **to know what is prohibited,** so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, **laws must provide explicit standards for those who apply them.** A **vague law impermissibly delegates basic policy**

> **matters to policemen, judges, and juries** for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." (Footnotes omitted.) Sewell v. Georgia, 435 US 982, 56 L Ed 2d 76, 98 S Ct 1635. (1978) (emphasis added)

As stated in 26 U.S.C. § 7602 which is the claimed authority for the summons:

> **(b) Purpose may include inquiry into offense.**
>
> The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any **offense** connected with the administration or enforcement of the internal revenue laws. (emphasis added)

The term "offense" was placed in the statute by the legislature. As the long list of Supreme Court decisions, quoted by the petitioner attest, no court can change those words to suit a particular purpose. Furthermore, this Court has made it very clear that a person has the right **to know what is prohibited,** and **laws must provide explicit standards for those who apply them.** In this case, the government and the lower courts are applying vague laws in an arbitrary and discriminatory fashion in violation of the doctrine of Sewell, supra.

H. Argument. The plain meaning of statutes.

The Petitioner's pleadings contained citations from this highest court in our land. Those citations supported the

statutes exactly as they were enacted by Congress. However, the government's contention as upheld by the lower courts, declared those decisions and statutes to be "unintelligible". A review of the Petitioner's Response to Order to Show Cause and subsequent pleadings, does not support such an outrageous conclusion. The Petitioner merely copied statutes and United States Supreme Court decisions in response to the government's allegations. To call such authorities "unintelligible", is an insult to Congress and the judicial system. As this Court stated in Chambers v. Nasco, Inc., 501 US ____, p. ____, 115 L Ed 2d 27, supra, "...this historic power of equity to set aside **fraudulently begotten judgments** is necessary to the integrity of the courts; moreover, a federal court has the power to conduct an independent investigation in order to determine whether the court has been the victim of fraud". When a court does not require a party to respond to the laws enacted by Congress and the rulings of our highest court, then the courts serve no purpose. Ridicule cannot be substituted for a proper response. The Petitioner merely copied the statutes as enacted by Congress and noted that this Court has always upheld the clear words of a statute. The Petitioner has the right to rely on the laws enacted by Congress. Under the doctrine of Goldenberg, supra, almost 100 years ago, this Court has consistently ruled that "When the words of a statute are unambiguous, the first canon of statutory construction--that courts must presume that a legislature **says in a statute what it means and means in a statute what it says** there--is also the last, and judicial inquiry is complete". Connecticut National Bank v. Germain, 503 US ____, p. ____, 117 L.Ed 2nd 391(1992)

Recently, this Court crowned almost 100 years of consistent rulings which upheld the laws as **specifically** enacted by a legislature. On January 17, 1996, this Court, in regard to Title 26 of the United States Code, stated once and for all that no court can rewrite statutes.

> We are bound by the language of the **statute as it is written**, and even if the rule Lundy advocates might "accor[d] with good policy," **we are not at liberty "to rewrite [the] statute** because [we] might deem its effects susceptible of improvement." Badaracco, 464 US, at 398, 78 L Ed 2d 549, 104 S Ct 756. Applying § 6512(b)(3)(B) **as Congress drafted it**, we find that the applicable look-back period in this case is two years, measured from the date of the mailing of the notice of deficiency. Accordingly, we find that the Tax Court lacked jurisdiction to award Lundy a refund of his overwithheld taxes. The judgment is reversed. Commissioner v. Lundy, 516 US ____, 133 L Ed 2d 611, 116 S Ct ____(January 17, 1996) (emphasis added)

This Court for almost 100 years has stated that "when a **statute speaks with clarity to an issue,** judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished". Metropolitan Stevedore Co. v. Rambo, 515 US ____, 132 L Ed 2d 226, 115 S Ct ____ Decided June 12, 1995 (emphasis added) "This fact only underscores our duty to refrain from reading a phrase into the statute when Congress has left it out". Keene Corp. v. United States, 508 US ____, 124 L Ed 2d 118, 113 S Ct ____ 1993."...courts must give effect to the clear meaning of statutes as written. Estate of Cowart v. Nicklos Drilling Co., 505 US ____, 120 L Ed 2d 379, 112 S Ct 2589 (1992)

"...courts do not resort to legislative history to cloud a statutory text that is clear" Ratzlaf v. United States, 510 US ____, p. ____, 126 L.Ed 2d 615 (1994).
"In construing federal revenue statute, Supreme Court gives no weight to Treasury Regulation which attempts to add to statute something which is not there". United States v Calamaro, 354 US 351, 1 L. Ed 2d 1394, 77 S Ct 1138(1957) "Silence in the legislative history of a statute as to any intention by the legislature to change existing practice cannot be controlling where the language of the statute is unambiguous". Dewsnup v. Timm, 502 US ____, p. ____, 116 L Ed 2d 903, p. 906 (1992)

CONCLUSION

This Court has stated over and over that when the laws are clear and unambiguous, they say what they mean and mean what they say. In Commissioner v. Lundy, supra, this Court emphatically stated that "**We are bound by the language of the statute as it is written**, . . **we are not at liberty "to rewrite [the] statute** . . . and . . . **Applying § 6512(b)(3)(B) as Congress drafted it**". Most certainly this Court must place the same judgment on **all** statutes. Otherwise, the courts will have no purpose, and we will all face the premonition predicted by Justice Brandeis in Olmstead v. United States, 277 US 438, 485,72 L Ed 944 , 959, 48 S Ct 564, 66 ALR 376 (1928):

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a **government of laws,** existence of the government will be imperiled if it fails to **observe the law scrupulously.** Our Government is the

> potent, the omnipresent teacher. For good or for ill, **it teaches the whole people by its example**. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means ... would bring **terrible retribution.** Against that pernicious doctrine this Court should resolutely set its face. Olmstead v United States, 277 US 438, 485,72 L. Ed 944, 959, 48 S Ct 564, 66 ALR 376 (1928) (dissenting opinion). (emphasis added)

The Petitioner has relied on the plain meaning of the laws and authorities as stated in his pleadings and as previously held by this Court In accordance with that doctrine Petitioner requests that this Petition for Certiorari be granted.

Respectfully resubmitted on this 6TH day of September 1996.

s/ James Kupcho

James Kupcho
682 Ridgedale Ave.
Woodbridge, NJ 07095

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 95-5839

UNITED STATES OF AMERICA; M. R. BRESSANT,
Revenue Officer of the Internal Revenue Service

v.

JAMES KUPCHO,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civ. No. 95-03199)
District Judge: Honorable Alfred J. Lechner, Jr.

Judgment Order

After consideration of the contentions raised by appellant, it is

ADJUDGED and ORDERED that the order of the district court entered October 26, 1995, be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT:

s/ _____
Circuit Judge

ATTEST:

s/_____
P. Douglas Sisk, Clerk

DATED: JUNE 11 1996

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-5839

UNITED STATES OF AMERICA; M. R. BRESSANT,
Revenue officer of the Internal Revenue Service

v.

JAMES KUPCHO,

Appellant,

SUR PETITION FOR REHEARING

BEFORE: SLOVITER, Chief Judge, and BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, MCKEE, AND SAROKIN, Circuit Judges

---

The petition for rehearing filed by the appellant, James Kupcho, in the above captioned matter having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the court in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT:

s/ _____
Circuit Judge

DATED: JUL 30 1996

APPENDIX C

FAITH S. HOCHBERG
United States Attorney

ANTHONY J. LABRUNA, JR.
Special Assistant U.S. Attorney
970 Broad Street, Room 5023
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FILED
Sep 21 1995

AT 8:30.....M
William T. Walsh
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA and M.R. BRESSANT, Revenue officer of the Internal Revenue Service,	: Hon. Alfred J. Lechner, Jr.
	: Civil Action No. 95-3199
Petitioners:	:
v.	
JAMES KUPCHO,	: ENTERED
Respondent,	: on THE DOCKET on _____ 1995 William T. Walsh, Clerk By _____ Deputy Clerk

Upon the Petition and Application for an order to Show Cause of Petitioner, and the Exhibits and Declaration attached thereto, brought before this Court by their attorney Faith S. Hochberg, United States Attorney for the District of New Jersey, and

WHEREAS, the Internal Revenue Service has complied with the requirements of the Powell decision, there has been no referral of this matter for criminal prosecution, that the summons was issued in good faith, that the investigation is for a legitimate purpose and that the material sought is relevant to that purpose, that the I.R.S. does not already have the requested information in its possession, that the proper administrative steps have been followed, that I.R.S. has not abandoned pursuit of the civil tax determination collection efforts, that Respondent's

blanket invocation of the Fifth Amendment is invalid and that Respondent has not properly invoked a Fifth Amendment privilege in this case, and that enforcement is appropriate, and that Respondent has not carried his burden with regard to the response to the Order to Show Cause,

IT IS on this 21 day of Sept. 1995,

ORDERED that Respondent, James Kupcho, must comply with the I.R.S. Summons, which is the subject of this enforcement action.

s/ _____

ALFRED J. LECHNER, JR., JUDGE
UNITED STATES DISTRICT COURT